



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of J.M.,
Police Officer (S9999R), Ocean City

CSC Docket No. 2017-1970

Medical Review Panel Appeal

ISSUED: September 10, 2018 (BS)

J.M., represented by Timothy J.P. Quinlan, Esq., appeals his rejection as a Police Officer candidate by the Ocean City Police Department and its request to remove his name from the eligible list for Police Officer (S9999R), Ocean City on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on January 26, 2018, which rendered its report and recommendation on January 28, 2018. Exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Rachel Safran, assisted by Dr. Lewis Schlosser (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as presenting with a number of “maturity issues” as well as issues in his background investigation, omissions from his applications, discrepancies in other applications and the psychological testing performed. Dr. Safran failed to recommend the appellant for appointment to the subject position. Dr. John Guerin (evaluator on behalf of the appellant) carried out a psychological evaluation and opined that “the method, process, and conclusions of the IFP evaluation do not conform to adequate standards of psychological assessment, and therefore cannot be relied upon to form conclusions about the suitability of the subject examined.” Dr. Guerin arrived at this determination “to a reasonable degree of psychological certainty.” However, Dr. Guerin made no comments in his report regarding his interview with the appellant nor was an opinion offered on the appellant’s psychological fitness for the subject position. Dr.

Dianni Pirelli (another evaluator on behalf of the appellant) conducted a psychological evaluation and opined that Dr. Safran had omitted positive information that was in the material. Additionally, Dr. Pirelli opined that the appellant did not have any mental health issues which would prevent him from carrying out the duties of the position. However, Dr. Pirelli noted that “(t)here are certainly a number of issues that have merit and might even have caused the hiring agency to refrain from offering him employment in the first place.” Dr. Pirelli found no significant psychological reason why the appellant would be unsuitable for employment as a Police Officer.

Two other psychological reports were included in the record for review. The first, conducted by Dr. Matthew Guller of IFP on November 3, 2014, recommended the appellant for employment as a Special Police Officer Class II. The other, conducted by Dr. Robert Tanenbaum dated August 3, 2015, found the appellant psychologically suitable to serve as a Collingswood Police Officer.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The Panel took the position that previous psychological evaluations were independent from the most recent evaluation which found the appellant psychologically unsuitable for employment as a Police Officer in Ocean City.¹ The Panel found that the psychological testing results are generally similar across all the evaluations, but the background behavioral information utilized in Dr. Safran’s report was more detailed which led to a different conclusion. While the Panel was not concerned about the appellant’s destruction of small amounts of controlled substances from a psychological perspective nor did it care to offer an opinion on Police discretion, it noted other areas such as purchasing alcohol for his underage brothers, sexual contact with a girlfriend while on break, problematic use of social media, and the negative interaction with a uniformed officer investigating a noise complaint as examples of his poor judgment. The Panel noted that during the appellant’s tenure with the Collingswood and Atlantic City Police Departments, there were no disciplinary incidents or internal affairs complaints. A supervisor at Collingswood Police Department stated that the appellant had some “maturity issues” when he started but had since become one of the “best officers.”

The Panel’s ongoing concerns centered on the events surrounding the unlicensed use of an unregistered motorcycle and the inconsistencies in the appellant’s various accounts of this incident. The Panel had additional concerns relating to the frequency with which the appellant is pulled over by Police relating

¹ The Civil Service Commission notes that, based on long standing administrative practice, a psychological assessment for employment in law enforcement is only considered valid for one year. See *In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff’d* on reconsideration (MSB, decided April 9, 2008).

to operation of his vehicle. In this regard, it noted that the appellant was pulled over by the Police on eight occasions in the previous two years prior to Dr. Safran's report. Further, the appellant informed the Panel that he had been pulled over two days prior to the meeting and yet again one or two months earlier. The Panel reported that the appellant had been able to avoid traffic violations, most likely because of his association with law enforcement. Indeed, the appellant admitted keeping his law enforcement identification visible on his leg during these incidents to avoid traffic summonses. Additionally, there is the appellant's omission of his being rejected for employment by the Pennsylvania State Police. The Panel opined that such behavior is consistent with the poor judgment as raised by Dr. Safran and raises questions regarding the appellant's judgment and integrity. Although none of these behaviors led to specific disciplinary action, such problematic behaviors are certainly consistent with Dr. Safran's findings of poor judgment and poor integrity. Accordingly, the Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is psychologically unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld. The Panel recommended that the appellant be removed from the eligible list.

In his exceptions, the appellant asserts that the conclusions reached by the Panel are based on "behavioral history" rather than standardized psychological testing. The appellant contends that since his psychological test results were all satisfactory, it would appear that the impact of the "facts" presented in the background check, conducted by Detective Fearnhead of the Ocean City Police Department, "seem" to be what caused the appellant's removal. The appellant contends that Detective Fearnhead was not "cross-examined," and the Panel ignored evidence that the appellant had "matured" and simply accepted the report and recommendation of Dr. Safran. Accordingly, the appellant argues the Panel ignored his several years of service as a Police Officer, absent any acts of insubordination, lateness, or any other sort of misconduct, "would arguably lead to a conclusion" that the appellant "has in fact matured." The appellant argues that there was a "complete lack of examination of the accuracy of the background material," and that this matter be referred for a hearing at the Office of Administrative Law" for a hearing. In support of his appeal, the appellant submits a copy of a Unit Citation Award he recently received.

CONCLUSION

The Job Specification for the title, Police Officer, is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the

ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives, the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

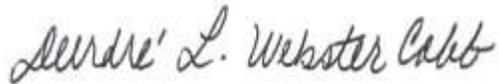
The Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and finds legitimate concerns were raised by the appointing authority's evaluator concerning the appellant's poor judgment and integrity issues. The Commission is not persuaded by appellant's exceptions that a hearing is needed regarding the appellant's behavioral history as no material dispute of fact exists. With regard to the appellant's request for a hearing on this matter, *N.J.A.C. 4A:4-6.5(g)* states in pertinent part that the Civil Service Commission either conduct a written record review or submit psychological appeals to the Medical Review Panel. The Commission shall review the appeal, including the written report and exceptions, if any, and render a final written decision. *See N.J.A.C. 4A:4-6.5(h)*. Hearings are granted only in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978)*. Two areas in the behavioral record which the Commission finds particularly troubling, purchasing alcoholic beverages for minors while employed as a Police Officer and using his law enforcement credentials to avoid receiving traffic summonses, are certainly not in dispute and were admitted to by the appellant before the Panel. Although the appellant was not subject to disciplinary action regarding these infractions, the public has an expectation to be served by Police Officers who do not engage in such inappropriate behaviors. The Commission finds the record, when viewed in its entirety, although absent of any specific disciplinary action, supports the findings of the Panel and the appointing authority's evaluator of problematic behaviors, poor judgment and poor integrity. Accordingly, the Commission is not comfortable in ratifying the appellant's psychological fitness to serve as a Police Officer.

ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that J.M. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 5TH DAY OF SEPTEMBER, 2018



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